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SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1988

STANLEY V. TUCKER,

Petitioner,

V.

NORTHEAST SAVINGS, F.A.,
ROBERT R. BASINE, DONNA GALLUZZO,
LORRAINE WHITEHOUSE d/b/a CAPITAL WEST

Respondents.

On Petition For a Writ of Certiorari To The
United States Court of Appeals
For the Second Circuit

JOINT BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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1HPP

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Second Circuit has decided this case in a way that is in conflict with the decision of another federal court of appeals on the same matter.

2. Whether the United States Court of Appeals for the Second Circuit has decided an important question of federal law which has not been settled by the United States Supreme Court.

3. Whether the United States Court of Appeals for the Second Circuit has decided an important question of federal law in a way in conflict with applicable decisions of the United States Supreme Court.

4. Whether The United States Court of Appeals for the Second Circuit has fully considered and properly decided the issue of whether the decisions of the Connecticut courts were res judicata of the petitioner's constitutional claims raised in his Section 1983 action.

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STATEMENT OF THE CASE

This case arose from four foreclosure actions against the petitioner brought in the Superior Court of Connecticut which concluded in favor of Hartford Federal Savings & Loan Association, corporate predecessor of appellee Northeast Savings, F.A., in 1979. Respondent Robert R. Basine, an attorney, represented Northeast Savings in the foreclosure proceedings and in subsequent appeals in state courts. Some of the properties involved were ultimately sold to respondents Galluzzo and Whitehouse, but prior to any sale and following the issuance of the foreclosure judgments, the Superior Court appointed several receivers of rents. The petitioner, Stanley Tucker, concedes that in fact he was present, was granted a hearing, and voiced his objections, at the time of each appointment. For this reason, on appeal the Supreme Court of Connecticut held that the Superior Court's rent receiver rules, embodied in Connecticut Practice Book Sections 504 through 510, had accorded Mr. Tucker due process of law and therefore were constitutional both as applied and facially. *Hartford Federal Savings & Loan Association v. Tucker,* 196 Conn. 172, 177, *cert. denied,* 474 U.S. 920 (1985). Moreover, as to that ruling, the United States Supreme Court denied certiorari. *Tucker v. Hartford Federal Savings & Loan Association,* 474 U.S. 920 (1985).

Having exhausted the appellate procedures of both the state and the federal judiciaries, Mr. Tucker filed this lawsuit in the United States District Court for the District of Connecticut under 42 U.S.C. Section 1983, again on the ground that the state court's rent receiver rules unconstitutionally denied him due process of law, and therefore were unconstitutional both as applied and on their face. The respondents filed a Motion for More Definite Statement and Motion to Strike portions of the Complaint, both of which were granted by order dated August 31, 1987. After the petitioner filed an amended complaint pursuant to that order, the defendants moved to dismiss the action. By order dated December 15, 1987, Judge Peter C. Dorsey granted the defendants' Motions to Dismiss on the

grounds that the District Court lacked subject-matter jurisdiction of the appellant's claims and that those claims were *res judicata*. Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-4 - F-11.

The petitioner, however, appealed Judge Dorsey's Ruling to the United States Court of Appeals for the Second Circuit (hereafter, "Second Circuit"). By order dated May 2, 1988, a three-judge panel granted the respondents' Joint Motion to Dismiss and for Summary Affirmance "substantially for the reasons stated in the Memorandum and Order of Judge Peter C. Dorsey". Second Circuit Order. The petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc were denied by the Second Circuit's Order dated July 5, 1988. Petitioner's Appendix D. Finally, the petitioner filed his corrected Petition for a Writ of Certiorari in the United States Supreme Court on October 26, 1988, his initial Petition dated September 29, 1988 having been rejected for failure to comply with procedural rules.

ARGUMENT

I. *The Second Circuit Has Decided This Case In A Way that is Consistent With The Decisions Of Other Federal Courts on The Relevant Issues.*

The petitioner contends that the Second Circuit's dismissal of his appeal runs counter to one case decided in the Ninth Circuit and others decided in the District of Columbia Circuit. This contention is false.

The Ninth Circuit case is *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621 (9th Cir. Feb. 16, 1988). In that case, a *pro se* litigant appealed the dismissal of his amended complaint, which was based in part on Section 1983. The plaintiff had amended his original complaint after the district court had granted the defendant's motion to dismiss without prejudice and instructed the plaintiff to make his complaint shorter and more concise. The Ninth Circuit reversed the district

court's order of dismissal because the *pro se* plaintiff had mistakenly eliminated from his amended complaint a portion of the original complaint essential to his Section 1983 claim. The appellate court found that the district court's instructions to the plaintiff regarding amendment of the Complaint were too vague.

> We do not, of course, require the district court to act as legal advisor to the plaintiff. However, the court must do more than simply advise the pro se plaintiff that his complaint needs to be shortened and more concise. . . .

Id. at *626*.

The petitioner cites no District of Columbia Circuit cases on point, but instead refers without specification to a news item which supposedly chronicles such cases. This hardly meets the standard of argument required to support a petition for certiorari. Accordingly, the respondents are obliged to distinguish the instant case only from *Karim-Panahi*.

And indeed, *Karim-Panahi* is easily distinguishable. The holding in *Karim-Panahi* does not apply if the "deficiencies in the section 1983 claims . . . cannot be cured by amendment". The deficiencies cited by Judge Dorsey — lack of subject-matter jurisdiction, res judicata, and lack of standing — obviously could not be so cured.

Moreover, the *Karim-Panahi* court found only that the *pro se* litigant should have been given a chance to amend the complaint to cure merely formal defects. In this case, Tucker has already been given *that* chance, having filed a Second Amended Complaint following a district court order granting the defendants' Motion to Strike and Motion for More Definite Statement. Thus, the Ninth Circuit case applies only to a situation in which a defendant has *prematurely* filed a Rule 12 (b) (6) motion to dismiss, when a motion to strike and/or motion for more definite statement would have been appropriate. It is plain in this case that such a situation did not confront the district court below.

Mr. Tucker's contention that the courts of appeals are in conflict as to the applicable criterion for dismissing a *pro se* litigant's complaint, then, is wholly illusory. Certiorari should be granted only where there is a real and embarrassing conflict of authority between courts of appeals. *Rice v. Sioux City Memorial Park Cemetery,* 399 U.S. 70 (1955). Accordingly, the court should not grant certiorari in this case on the basis of any alleged conflict among the courts of appeals.

II. *The Second Circuit Has Not Decided Important Questions of Federal Law Which The United States Supreme Court Has Not Addressed.*

The Second Circuit's order of dismissal incorporates by reference the reasoning of the District Court's ruling dismissing the complaint. That ruling, in turn, is based on three legal principles well established in federal law. These principles are (1) subject-matter jurisdiction, (2) res judicata, and (3) standing. Ruling on Motion to Dismiss, Petitioner's Appendix F. *See Migra v. Warner City School District Board of Education,* 465 U.S. 75 (1983) (state court decisions on constitutional issues are res judicata of federal court decisions on those issues in Section 1983 actions); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 (1983) (district court has no subject-matter jurisdiction to review final judgment of a state court); *Broadrick v. Oklahoma,* 413 U.S. 60 (1983) (litigant has no standing to challenge constitutionality of state rule which was constitutionally applied to that particular litigant).

The petitioner's argument from cases concerning state court or state bar rules is simply inapposite. The only case he cites that even approaches relevance to the instant case is *District of Columbia Court of Appeals v. Feldman, supra,* 460 U.S. 462 (1983). In that case, the Supreme Court held that federal district courts have subject-matter jurisdiction over constitutional challenges of rules promulgated by state courts in non-judicial proceedings, such as the rules the petitioner challenges here, only if they have not already have been challenged in state court proceedings. 460 U.S. at 485. This ruling is not only consistent with but is required by 28 U.S.C. Section 1738, which provides

that a state court judgment be given the "same full faith and credit" in the federal courts as it would be given in the court of the state rendering the judgment.

As district Judge Dorsey made quite plain, the petitioner has indeed *already* challenged the state court rent receiver rules in all of the Connecticut courts having appropriate jurisdiction, which challenge culminated in *Hartford Federal Savings & Loan v. Tucker, supra,* 196 Conn. 172, *cert. denied,* 474 U.S. 920 (1985). Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-4, F-7 - F-11.

It follows that the District Court in fact had no subject-matter jurisdiction of Mr. Tucker's present Section 1983 claim under the clear precedent of this Court, and under 28 U.S.C. Section 1738. Accordingly, neither the District Court nor the Second Circuit has rendered a decision on an issue which the United States Supreme Court has not addressed.

III. *The Second Circuit Has Not Decided This Case in a Way That is in Conflict With Any Decisions of The United States Supreme Court.*

Mr. Tucker argues that the Second Circuit has acted contrary to Supreme Court precedent on the matters of standing and abstention. Mr. Tucker, once again, is palpably incorrect.

According to the petitioner, he was deprived of the value of his property due to the Connecticut Superior Court's judgments of strict foreclosure, and therefore has standing to sue on the basis of that court's application of the rent receiver rules *pursuant* to the judgments of foreclosure. This, obviously, is a flagrant non sequitur, reflecting a mismatch of the injury and its cause.

The denial of due process allegedly visited on Mr. Tucker by the application of the rent receiver rules did not cause the deprivation of property which Mr. Tucker cites in support of his standing. Rather, the prior foreclosure proceedings caused that deprivation, but Mr. Tucker does not challenge the constitutionality of those proceedings. Thus, the salient requirement of standing established by the United States

Supreme Court — namely, a nexus between the injury and the defendant's alleged action — is missing here. *E.g., Linda R.S. v. Richard D.*, 410 U.S. 614 (1973). *See also Association Against Discrimination in Employment, Inc. v. City of Bridgeport*, 710 F.2d 69, 73 (2d Cir. 1983) ("A litigant is not entitled to have the court decide the merits of an issue he raises unless he can show some basis for arguing that the challenged action has caused him some cognizable injury.").

Given this lack of a nexus between injury and the allegedly unconstitutional action, the petitioner's Section 1983 claim amounts to a general or "facial" challenge to the rent receiver rules, which is clearly prohibited in constitutional adjudication on the strength of the precedent of this court proffered by Judge Dorsey. Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-11 - F-13.

Next, Mr. Tucker makes a classic "straw man" argument. To wit, he asserts that *Younger* abstention is not applicable to this case. The respondents are in complete agreement with this assertion, and in fact have never argued that the *Younger* doctrine did apply. Indeed, in their Joint Memorandum of Law in Support of Motion to Dismiss and for Summary Affirmance (hereafter, "Joint Memorandum"), they explicitly stated:

> That [*Younger*] doctrine is intended only to avoid the risk of federal judicial interference with *ongoing* state proceedings. As all state proceedings have concluded in the instant case, *Younger* abstention is simply inapplicable. . . .

Joint Memorandum, p. 4 (emphasis in original).

Instead, the thrust of the respondents' argument was that while *Younger* abstention is a discretionary doctrine, the stronger *Rooker-Feldman* doctrine operates mandatorily to foreclose federal jurisdiction where, as here, state proceedings on the same issue have been concluded, and review in the United States Supreme Court either is available or has been denied. Joint Memorandum, pp. 3-6. *See Pennzoil Co. v. Texaco, Inc.*, 107 S. Ct. 1519 (1987); *District of Columbia Court of Appeals v. Feldman, supra*, 460 U.S. 462; *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). *See also Younger v. Harris*, 401 U.S. 37

(1971). This was precisely the holding of District Judge Dorsey, which the Second Circuit endorsed. Ruling on Motion to Dismiss, Petitioner's Appendix F, pp. F-7 - F-11.

The petitioner's arguments as to both standing and abstention, then, provide no basis for this Court to grant certiorari.

IV. *The Second Circuit Fully Considered And Properly Decided The Question of Whether The Decision in The Supreme Court of Connecticut Was Res Judicata of The Petitioner's Constitutional Claims.*

The petitioner's final argument is that the Second Circuit and District Court incorrectly upheld the respondents' defense of res judicata. Specifically, he claims that the state proceedings and the federal proceeding were not identical as to the issues or parties. In fact, the issues of both the as applied validity and the facial validity of the rent receiver rules were fully litigated in the state proceedings. While this Section 1983 claim and the state proceedings may not be strictly identical in all of their particulars, as Judge Dorsey noted, "[t]he prior state judgment is preclusive as to all issues actually litigated in that action, including the issue of whether the state procedures afforded Tucker due process". Ruling on Motion to Dismiss, p. 9, footnote 4 (citing *Friarton Estates Corp. v. City of New York*, 681 F.2d 150, 158-59 (2d Cir. 1982) (Friendly, J.)).[1] *See also Allen v. McCurry*, 449 U.S. 90 (1980) (state proceedings have collateral estoppel effect on Section 1983 actions).

Mr. Tucker also seeks to distinguish his Section 1983 action from the state proceedings on the basis of two District of Connecticut cases, decided in 1983 after the pleadings in the initial state lawsuit were closed, purportedly establishing a right of a prospective defendant to be notified of any defense he or she may have prior to a deprivation of property. He neglects

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[1]Footnote 4, containing the quoted language, is conveniently and conspicuously omitted from the petitioner's reproduction of Judge Dorsey's ruling in Appendix F of the Petition for a Writ of Certiorari. *See* Petitioner's Appendix F, p. F-11.

to add that Judge Dorsey squarely confronted this issue. Specifically, Judge Dorsey noted that Mr. Tucker's appeal to the Supreme Court of Connecticut and corresponding petition for certiorari to the United States Supreme Court were not brought until 1985, so that the petitioner knew of his right to notice of defenses at that time and could have litigated any deficiency in the rent receiver rules relating to such notice in the state proceedings. Ruling on Motion to Dismiss, p. 7, footnote 3.[2] Accordingly, *District of Columbia Court of Appeals v. Feldman, supra,* 460 U.S. at 484 n.16, precludes relitigation here of that issue as well as the issues outlined above. Ruling on the Motion to Dismiss, Petitioner's Appendix F, pp. F-8 - F-9.

Thus, the courts below have fully considered the arguments against the application of res judicata principles in this case, and correctly decided that they were invalid.

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[2]Mr. Tucker also selectively deleted this footnote from his Appendix F. *See* Petitioner's Appendix F, p. F-8.

CONCLUSION

The District Court's decision in this case, adopted by the Second Circuit, is not in conflict with any of the decisions of the Second Circuit itself, other courts of appeals, or the United States Supreme Court. Further, that decision is in fact based on clear and settled Supreme Court precedent, and therefore does not call for clarification, express approval, or elaboration by the United States Supreme Court. *See generally* Sup. Ct. R. 17. Moreover, the result reached by the District Court is not merely technically well-founded in constitutional law; it is also eminently fair. It is beyond question that the petitioner was accorded a full and fair opportunity to litigate in state court and by petition for certiorari the constitutional claims that he has raised yet again in the instant case.

Finally, as a matter of sound judicial administration and policy, it would be imprudent to change long-standing federal law so as to make 42 U.S.C. Section 1983 authority for collateral attack on state court decisions and on denials of petitions for certiorari, as the petitioner seeks to do here. Were the Court to do this, the process of vindicating individual rights in the federal courts would be potentially interminable, and the competence of state courts to adjudicate federal rights under "our federalism" severely and perhaps irreparably degraded. *See Allen v. McCurry, supra,* 449 U.S. 90.

For these reasons, the respondents respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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